IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

MFA.No. 435 of 2001(A)

(AGAISNT THE AWARD DATED 3/09/1996 IN OPMV.948/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA)
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APPELLANT: IIND RESPONDENT:

K.A.KUNJAPPAN,
S/O.ACHUTHAN, AGED 47 YEARS,
KALLINGAL HOUSE, THAZHUVAMKUNNU P.O.,
VELLARAMKALL, KALLOORKKAD,
MUVATTUPUZHA.

BY ADV. SRI.K.JAJU BABU
SRI.JOSEPH SEBASTIAN PURAYIDAM

RESPONDENTS: RESPONDENTS 1 & 3 AND PETITIONER:
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1. **PAULOCHAN, AGED 45 YEARS,**
RESIDING AT MURICKANANIYIL BUILDINGS,
NEAR PARALY PRINTERS, KALLOORKKAD P.O.,
KALLOORKADU VILLAGE, MUVATTUPUZHA TALUK.

2. **THE ORIENTAL INSURANCE COMPANY LIMITED.,**
KOTHAMANGALAM, REP. BY ITS BRANCH MANAGER.

3. **SOMAN, S/O.KUNJU, AGED 30 YEARS,**
MUNDAKKAL HOUSE, KALLOORKKAD P.O.,
MUVATTUPUZHA.

BY ADV. SMT.A.S.BEENU for R1
SRI.GEORGE CHERIAN (THIRUVALLA) for R3

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A.NO.435/2001

ORDER ON C.M.P.NOS.7230/2001 AND 2052/2002 IN MFA.NO.435/2001

DISMISSED

4/07/2007 **SD/- K.PADMANABHAN NAIR, JUDGE**

/TRUE COPY/

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K.PADMANABHAN NAIR. J.

M.F.A 435 of 2001

Dated this the 4th day of July, 2007

JUDGMENT

1. The 2nd respondent in O.P (MV) 948/1995 on the file of the Motor Accidents Claims Tribunal Moovattupuzha has filed this appeal challenging an award passed by the Tribunal by which it has awarded an amount of Rs. 12,850/- with interest to the 1st respondent in this appeal who was the petitioner in the Original Petition. The 1st respondent filed an original petition alleging that at about 4.30 p.m on 27-7-1993, he met with a Motor Vehicle accident and sustained injuries. He was travelling in a goods vehicle which hit against a telephone post. It was averred that the accident occurred due to the negligence of the driver of the lorry. The appellant contended that it was an inevitable accident. The driver of the lorry did not contest. The insurer disputed its liability contending that more than 25 persons were travelling in the goods vehicle and hence there was violation of policy conditions. The Tribunal found that the accident occurred due to the negligence of the driver of the lorry and awarded a compensation of Rs. 12,850/-. The insurer was exonerated and the appellant was directed to pay the amount. Challenging that award this appeal is filed.

2. The accident was admitted The contention raised by the appellant was that it was an inevitable accident. It was contended that in order to avoid a collision with a jeep the driver of the lorry swerved the vehicle and the petitioner jumped from the vehicle and sustained injuries

The Tribunal relying on the evidence adduced in this case had found that no evidence was adduced by the appellant to prove his contention. The 1st respondent/petitioner gave evidence to the effect that the accident occurred due to the negligence of the driver of the lorry. That was accepted by the Tribunal. Those finding of facts are based on good evidence. The Tribunal awarded Rs. 12,850/- as compensation under the various heads and I have gone through the award . The evidence on record shows that the 1st respondent sustained lacerated wound frontotemporal region 7 x 1cm exposing underlying bone and lacerated wound right side of the lower lip 3 x 2cm. Considering the nature of injuries and the period of treatment undergone by the 1st respondent the Tribunal fixed the compensation to Rs.12,850/- I do not find any reason to intefere with that finding.

3. Admittedly the petitioner was a passenger in the goods vehicle . No additional premium was collected by the insurer. 25 persons were travelling in the vehicle In addition to the offences under Sections 279, 337 & 338 I.P.C the driver was also charged with the offences under the provision of the M.V.Act 1988. So the finding of Tribunal that the insurer cannot be saddled with the liability is also correct and does not call for any interference. The appeal is devoid of any merits and it is only to dismissed.

In the result, the appeal is dismissed.

K.PADMANABHAN NAIR,JUDGE

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